No. 18-489

In the Supreme Court of the United States

BRADLEY WESTON TAGGART,

Petitioner,

v.

SHELLEY A. LORENZEN, ET AL.,

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF FOR RESPONDENTS

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QUESTION PRESENTED

Whether, under the Bankruptcy Code, a creditor's good-faith belief that the discharge injunction does not apply precludes a finding of civil contempt.

CORPORATE DISCLOSURE STATEMENT

Sherwood Park Business Center, LLC has no parent corporation, and no publicly held company owns 10% or more of its stock.

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INTRODUCTION

Contempt of court is "a potent weapon," designed for the situation in which a litigant deliberately disobeys a clear court order. *International Longshoremen's Ass'n, Local 1291* v. *Philadelphia Marine Trade Ass'n*, 389 U.S. 64, 76 (1967). That is not this case.

Petitioner and respondents were involved in a contract dispute in state court when petitioner filed for bankruptcy. After the bankruptcy court granted petitioner a discharge, the state case resumed, and respondents prevailed. Under the parties' contract, respondents were entitled to attorneys' fees. But it was unclear whether they could obtain those fees in light of the discharge order, even if they limited their request to post-bankruptcy fees. So they asked the state court to resolve that question.

Everyone agreed that the state court had jurisdiction to decide whether the discharge order allowed an attorneys' fees award. The state court decided the issue in respondents' favor. Petitioner then asked the bankruptcy court to hold respondents in contempt, on the theory that they violated the discharge order by seeking attorneys' fees. Respondents argued that they had not violated the discharge order, and even if they had, they justifiably relied on the state court's decision. The court of appeals ultimately agreed and concluded that respondents could not be held in contempt. That conclusion was correct.

Bankruptcy courts may impose contempt sanctions when "necessary or appropriate" to enforce their own orders. 11 U.S.C. 105(a). Under longstanding equitable principles, it is neither necessary nor appropriate to hold a person in contempt for violating a court order when he has a reasonable, good-faith belief the order does not apply to his conduct. Here,

there was an open legal issue about the scope of the discharge order, and the state court resolved that issue in respondents' favor. Contempt was not appropriate.

Petitioner takes a very different view. He proposes a near-strict-liability rule that would require contempt sanctions for nearly all creditors who violate discharge orders, with no defense for creditors acting reasonably and in good faith. That rule cannot be squared with traditional notions of contempt, basic notions of fairness, or the bankruptcy court's broad statutory discretion.

Petitioner attempts to justify his rule as necessary to help debtors obtain a fresh start, but he takes that concept too far. The Bankruptcy Code seeks to balance the interests of debtors and creditors. Petitioner's rule would upset that balance by chilling creditors from collecting on non-discharged debts. And petitioner's rule would not actually help debtors. Debtors would still have to bear their own costs if creditors followed petitioner's suggested procedure and sought advance dischargeability determinations in bankruptcy court. So, if respondents had followed petitioner's procedure, petitioner would be no better off.

This Court should reject petitioner's rule and hold that contempt sanctions are not appropriate when a creditor had a reasonable, good-faith belief that the discharge order did not apply to his conduct. To the extent the court of appeals suggested that an "unreasonable" good-faith belief would be enough to avoid contempt sanctions, that language was dictum. The Court should affirm, because respondents acted in good faith and the state court's decision establishes the reasonableness of their position.

STATUTORY PROVISIONS INVOLVED

Pertinent statutory provisions are reprinted in an appendix to this brief. App., *infra*, 1a-9a.

STATEMENT

A. Statutory Background

1. A bankruptcy proceeding begins when a debtor files a bankruptcy petition and typically ends when the bankruptcy court grants the debtor a discharge. The filing of the petition triggers an automatic stay that generally bars creditors from collecting debts while the bankruptcy proceeding is pending. See 11 U.S.C. 362(a). Entry of the discharge order relieves the debtor of liability for most debts that accrued before the bankruptcy filing. See 11 U.S.C. 727, 944, 1141, 1228, 1328. The discharge order "operates as an injunction," barring creditors from attempting to "collect, recover or offset any such debt." 11 U.S.C. 524(a)(2).

Disputes sometimes arise about whether the discharge order applies to a particular debt, because not all debts are discharged in bankruptcy. See 11 U.S.C. 523(a), 1328(a). In a Chapter 7 case (like this one) the discharge order typically is a form order that does not specify which of the debtor's debts are and are not discharged. J.A. 59-62 (discharge order in this case); see U.S. Courts, *Official Form 318*, at 1, perma.cc/2LPL-F2DG.

Further, with a few enumerated exceptions, debtors and creditors are not required to obtain advance determinations from the bankruptcy court about whether a discharge order covers a particular debt. See, *e.g.*, 11 U.S.C. 523(c)(1) (listing debts that are discharged unless a party obtains an advance determination from the court). Instead, the parties may wait

and, if needed, obtain a determination about dischargeability later from a state or federal court. See 28 U.S.C. 1334(b) (concurrent jurisdiction); Fed. R. Bankr. P. 4007 & advisory committee's note (1987) (authorizing debtor or creditor to obtain a ruling on dischargeability of a debt and recognizing that bankruptcy and nonbankruptcy courts have concurrent jurisdiction).

2. The Bankruptcy Code does not specify a particular remedy for the situation in which a creditor attempts to collect a debt in violation of a discharge order. Instead, the Code vests the bankruptcy court with broad discretionary authority, stating that the court "may" issue any "order, process, or judgment" that is "necessary or appropriate" to enforce its own orders. 11 U.S.C. 105(a). That includes the authority to hold a creditor in contempt of court. See, *e.g.*, *First State Bank of Roscoe* v. *Stabler*, 914 F.3d 1129, 1140 (8th Cir. 2019); see also Fed. R. Bankr. P. 9020 (recognizing bankruptcy court's contempt authority).

Contempt orders are equitable and discretionary. See, *e.g.*, *Chambers* v. *NASCO, Inc.*, 501 U.S. 32, 44-45 (1991); *Jove Eng'g, Inc.* v. *IRS*, 92 F.3d 1539, 1545-1546 (11th Cir. 1996). Even when a person violates a discharge order, the court may "refuse to hold [the] person[] in contempt." *In re Revere Copper & Brass, Inc.*, 29 B.R. 584, 588-589 (Bankr. S.D.N.Y. 1983). The court also may take steps short of holding the person in contempt to remedy the violation. See 11 U.S.C. 105(a) (authorizing any "order, process, or judgment").

3. In two circumstances not present here, Congress specified remedies for particular violations of bankruptcy court orders.

First, Congress required the bankruptcy court to award damages for certain "willful" violations of the automatic stay that cause injury. See 11 U.S.C. 362(k)(1) ("an individual injured by any willful violation of" the automatic stay "shall recover actual damages, including costs and attorneys' fees, and, in appropriate circumstances, may recover punitive damages," subject to a specific good-faith exception).

Second, Congress authorized a damages award against the United States when an Internal Revenue Service employee "willfully" violates a court order by collecting taxes. See 26 U.S.C. 7433(e)(1) (taxpayer may seek damages "[i]f, in connection with any collection of Federal tax with respect to a taxpayer, any officer or employee of the Internal Revenue Service willfully violates" an automatic stay or discharge order). Congress made that the exclusive remedy for such violations and required that all claims be brought within two years. See 26 U.S.C. 7433(d)(3), (e)(2)(A).

B. Factual Background

The dispute in this case stems from an agreement to build a business park in Sherwood, Oregon. Pet. App. 4a, 25a. Petitioner, respondent Keith Jehnke, and predecessors-in-interest to respondent Terry Emmert agreed to form respondent Sherwood Park Business Center, LLC (SPBC). *Id.* at 25a-26a. The agreement specified that each of them would obtain an ownership share in SPBC. *Id.* at 25a. Petitioner, a general contractor, agreed to be responsible for managing the construction and operation of the business park. *Ibid.*

Petitioner began having serious financial problems. Pet. App. 25a. He stopped paying state and federal payroll taxes and began using SPBC funds for his

own personal use. *Id.* at 25a-26a. Petitioner then "disappeared." J.A. 103.

Jehnke took over management of the business park. Pet. App. 26a. He discovered that petitioner had wrongfully appropriated approximately $30,000 of SPBC funds for his own use. *Ibid.* SPBC initiated an arbitration proceeding against petitioner; the arbitrator found petitioner liable for breach of fiduciary duty and conversion and ordered him to repay the funds. *Ibid.*

Petitioner and his lawyer, John Berman, decided that petitioner would sell his ownership interest in SPBC to Berman for $200,000. Pet. App. 27a. That sale violated the express terms of the parties' contract, which prohibited one SPBC member from transferring his ownership interest to a third party without the consent of the other members, and also gave the other members rights of first refusal. *Id.* at 25a.

C. State Court Proceedings

1. SPBC sued petitioner and Berman in Oregon state court to unwind petitioner's transfer to Berman and remove petitioner as an owner of the company. Pet. App. 5a, 22a. On the eve of trial, petitioner filed a Chapter 7 bankruptcy petition, and the state-court case was stayed. *Ibid.*

Petitioner ultimately received a discharge of his debts. Pet. App. 5a. The discharge order was a form order that simply granted petitioner a discharge and did not specify which of his particular debts were and were not discharged. J.A. 60.

The state-court case then resumed. Petitioner filed a motion to dismiss the claims against him in light of his bankruptcy. Pet. App. 6a. The trial court denied the motion, noting the parties' agreement that

no money judgment would be entered against petitioner because of his bankruptcy discharge. *Ibid.* Petitioner was represented by Berman at trial but did not appear or testify. *Id.* at 28a. Petitioner did participate in the litigation in other ways, including by appearing for a deposition and by maintaining his claim for attorneys' fees. *Id.* at 5a-7a, 30a; J.A. 88-89.[1]

2. The state court entered judgment in favor of SPBC, unwinding petitioner's sale to Berman and allowing Emmert and Jehnke to buy out petitioner's interest at fair market value. Pet. App. 6a, 22a-23a. The judgment stated that any party could petition for attorneys' fees. *Id.* at 6a. Under the relevant state rule, the parties had to request attorneys' fees within 14 days. See Or. R. Civ. P. 68(C)(4)(a).

SPBC, Emmert, and Jehnke, represented by attorney Stuart Brown, petitioned for attorneys' fees from petitioner. Pet. App. 6a.[2] They relied on the parties' contract, which expressly authorized the prevailing party in any contract-related dispute to recover attorneys' fees. J.A. 76-77 (citing parties' contract). They "alerted the state court to the existence of" the discharge order, Pet. App. 6a, and then argued that, under circuit precedent, the order did not bar an award of attorneys' fees because petitioner had "returned to

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[1] Petitioner had filed a counterclaim for attorneys' fees in the state-court case and had listed that potential award as a contingent asset in his bankruptcy proceeding. Pet. App. 5a, 27a. When he moved to dismiss SPBC's claim against him, he did not move to dismiss his counterclaim. *Id.* at 28a; Br. in Opp. App. 16a.

[2] Brown passed away in 2013. Pet. App. 8a n.3. Respondent Shelley Lorenzen, his surviving spouse, is the executor of his estate. *Ibid.*

the fray" in the state-court litigation, *id.* at 6a-7a; J.A. 79, 88-89. Under the "return to the fray" doctrine, a litigant who actively engages in litigation after filing for bankruptcy can be liable for attorneys' fees in that litigation, even if the litigation concerns a pre-petition obligation. See Pet. App. 7a; see also *In re Ybarra*, 424 F.3d 1018, 1024 (9th Cir. 2005). Respondents limited their request to attorneys' fees incurred post-discharge. Pet. App. 6a, 29a; J.A. 90.

Petitioner conceded that the state court had jurisdiction to decide whether the discharge order applied to the attorneys' fees request. J.A. 94. And he agreed that *Ybarra* was the controlling law. J.A. 65. He argued that the discharge order barred any award of attorneys' fees because he had not actively participated in the state-court litigation post-discharge. Pet. App. 7a; J.A. 65-66, 92.

The state court agreed with respondents. J.A. 96-99. It held that the discharge order did not bar post-discharge attorneys' fees because petitioner had "returned to the fray" in the state-court litigation. Pet. App. 7a; see J.A. 96-99. The court awarded approximately $45,000 in attorneys' fees, only to SPBC. Pet. App. 7a; J.A. 112.

D. Federal Contempt Proceedings

1. Before the state court ruled on the attorneys' fees issue, petitioner moved to reopen his bankruptcy case. Pet. App. 23a. He asked the court to hold SPBC, Emmert, Jehnke, and Brown in contempt of court because (in his view) their request for attorneys' fees in the state-court case violated the discharge order. *Ibid.*

The bankruptcy court declined to impose contempt sanctions. Br. in Opp. App. 12a-35a. It concluded that respondents had not violated the discharge order at all because petitioner's post-discharge participation in

the state-court litigation meant he had "reenter[ed] the fray" and could be liable for attorneys' fees. *Id.* at 33a-35a.

The district court reversed. Br. in Opp. App. 1a-11a. It held that petitioner had not "return[ed] to the fray" and remanded for the bankruptcy court to consider whether respondents knowingly violated the discharge injunction. *Id.* at 11a.[3]

2. On remand, the bankruptcy court imposed contempt sanctions. Pet. App. 52a-75a. The bankruptcy court stated that contempt sanctions are justified when an alleged contemnor's violation of a discharge order is "willful," meaning that the person is "aware of the discharge injunction" and "intended the actions that violated" it. *Id.* at 58a, 60a (internal quotation marks omitted). The court acknowledged that this effectively was a "strict liability" standard. *Id.* at 60a.

Applying that standard to this case, the court awarded petitioner more than $100,000 in attorneys' fees, emotional-distress damages, and punitive damages. Pet. App. 61a-62a, 65a-75a.

3. The bankruptcy appellate panel (BAP) reversed. Pet. App. 21a-51a. The BAP explained that the bankruptcy court used the "wrong legal standard," because civil contempt is appropriate only if the alleged contemnor was "aware of the discharge injunction *and* aware that it applied to his or her claim." *Id.* at 44a, 48a.

Here, the BAP noted, "the scope of the discharge order * * * was ambiguous." Pet. App. 46a. "[T]he order itself did not advise [respondents] of the scope

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[3] Petitioner appealed the state trial court's decision, and the state appellate court agreed with the reasoning of the district court. J.A. 101-128.

of the injunction under the *Ybarra* rule," and respondents "could not possibly have been aware that the discharge injunction was applicable to their fee request until the *Ybarra* question was adjudicated." *Id.* at 50a-51a. Once the state court resolved that issue in respondents' favor, respondents "were entitled to rely on that decision." *Id.* at 47a.

Otherwise, the BAP explained, no creditor would ever be willing to "seek a court's ruling on the issue" of the scope of a discharge, for fear of contempt sanctions. Pet. App. 46a-47a. Indeed, the BAP "fail[ed] to see" how there was a violation of the discharge order at all, because all respondents had done was ask the state court to rule on an open issue about the scope of the discharge order. *Ibid.*

4. The court of appeals affirmed. Pet. App. 1a-15a. It explained that, to hold a person in contempt for violating a discharge order, the bankruptcy court must find that the person actually knew that the discharge order applied and violated it anyway. *Id.* at 11a.

Here, the court explained, respondents lacked the necessary knowledge. Pet. App. 12a. They "possessed a good faith belief that the discharge injunction did not apply to their claims" based on "the state court's judgment" so holding. *Id.* at 13a. Even if respondents ultimately were incorrect on that disputed legal issue, the court held, respondents should not be held in contempt. *Ibid.* In support of its holding, the court of appeals relied on circuit precedent stating that a "creditor's good faith belief that the discharge injunction does not apply to the creditor's claim precludes a

finding of contempt, even if the creditor's belief is unreasonable." *Id.* at 12a (citing *In re ZiLOG, Inc.*, 450 F.3d 996, 1009 n.14 (9th Cir. 2006)).[4]

SUMMARY OF ARGUMENT

A bankruptcy court should not hold a person in contempt of court for violating a discharge order when that person had a reasonable, good-faith belief that the discharge order did not apply to his conduct. Respondents plainly meet that standard, because they relied in good faith on a state-court decision in their favor. This Court therefore should affirm.

A. The Bankruptcy Code authorizes bankruptcy courts to take any "necessary or appropriate" steps to enforce their orders. 11 U.S.C. 105(a). Longstanding principles of contempt establish that it is neither "necessary" nor "appropriate" to impose contempt sanctions for violation of a court order when the person had good reason to believe the order did not apply to his conduct.

This Court has explained that contempt is a "potent weapon" designed to address "violation of a court order by one who fully understands its meaning but chooses to ignore its mandate." *International Longshoremen's Ass'n, Local 1291* v. *Philadelphia Marine*

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[4] Respondents argued to the court of appeals that they had not violated the discharge order at all. Emmert et al. C.A. Br. 30-34; Brown C.A. Br. 28-32. The court "expressed no opinion" on the issue, Pet. App. 14a, so it remains open in the event of a remand.

Petitioner's statement (Br. 9 n.2, 10 n.4) that Lorenzen "conceded" a violation is mistaken. Although Lorenzen conditionally withdrew her cross-appeal because of new circuit precedent, she never conceded that circuit law barred respondents from seeking attorneys' fees at the time they filed the request, or that respondents violated the discharge order merely by asking a court to construe the scope of that order. See Br. in Opp. 24.

Trade Ass'n, 389 U.S. 64, 76 (1967). Because contempt is such a severe remedy, a person should not be held in contempt if "there is a fair ground of doubt as to the wrongfulness of [his] conduct." *California Artificial Stone Paving Co.* v. *Molitor*, 113 U.S. 609, 618 (1885). A reasonable, good-faith belief is enough to insulate a person from contempt sanctions, *Maness* v. *Meyers*, 419 U.S. 449, 470 (1975); *In re Watts*, 190 U.S. 1, 32 (1903), but good faith, standing alone, is not, *McComb* v. *Jacksonville Paper Co.*, 336 U.S. 187, 192 (1949).

The reasonable, good-faith belief standard is fair and workable. Bankruptcy courts already use that standard in a variety of contexts. Many provisions of the Code depend on good faith. In assessing good faith, bankruptcy courts do not look solely to the litigant's stated subjective belief but instead probe the basis for that belief using objective factors.

In the decision below, the court of appeals declined to impose contempt sanctions based on respondents' good-faith reliance on the state-court decision in their favor. In its opinion, the court suggested that a good-faith belief would insulate a creditor from contempt sanctions even if that belief was "unreasonable." The court of appeals' language about an unreasonable belief was dictum. The court did not rely on it in this case. Instead, it reviewed the reasons why respondents did not believe the discharge order barred their request and concluded that, because respondents relied on the state court's decision in their favor, they could not be held in contempt.

B. The federal government proposes a legal rule that is substantially the same. Under the government's rule, a creditor cannot be held in contempt for violating a discharge order if there is a "fair ground of doubt" as to whether the order applies to his conduct.

U.S. Br. 15 (quoting *California Artificial Stone Paving Co.*, 113 U.S. at 618). Although the government's standard is primarily an "objective" one (*id.* at 11), the government leaves room for bankruptcy courts to consider good faith and bad faith. In particular, while "subjective good-faith belief, standing alone, does not preclude a finding of civil contempt," "a defendant's subjective good-faith belief that it is complying with an injunction might sometimes be relevant to the determination whether the belief was objectively unreasonable." *Id.* at 23.

Under both approaches, contempt is inappropriate here, because it is undisputed that respondents acted in good faith, and they plainly had "fair ground" to doubt that the discharge order barred their attorneys' fees request.

C. Petitioner proposes a sharply different rule. In his view, a creditor must be held in contempt if he was aware of a discharge order and intentionally took the actions that violated it. That is a near-strict-liability rule that leaves no room for reasonable actions taken in good faith.

Petitioner's rule cannot be reconciled with the discretionary and flexible language of the Bankruptcy Code. Section 105 states that the court "may" take actions "necessary or appropriate" to enforce its orders – not that it must impose sanctions for any order violation. When Congress wanted to require the bankruptcy court to impose sanctions, it used mandatory language. See 11 U.S.C. 362(k)(1). Further, petitioner ignores the longstanding equitable principles that make contempt sanctions inappropriate when a person has a reasonable, good-faith belief that he is complying with the relevant court order.

Petitioner claims his rule is necessary to ensure that debtors have a fresh start upon discharge. But his rule treats contempt as a mere cost-shifting rule, not as the "potent weapon" this Court has described. Further, petitioner's rule would upset Congress's careful balancing of interests in the Bankruptcy Code because it would put a heavy weight on the scales in favor of debtors even after their bankruptcy proceedings have concluded. As the government explains, that "would unduly hinder a creditor's legitimate efforts to collect non-discharged debts." U.S. Br. 27.

Perhaps recognizing the harshness of his rule, petitioner states that a creditor can avoid contempt by seeking an advance bankruptcy court ruling before attempting to collect on a debt. Pet. Br. 11, 14-15, 23 n.12. That requirement is inconsistent with the Bankruptcy Code, which mandates advance determinations in only a few specified circumstances. It also is inconsistent with petitioner's policy argument, because a debtor would have to bear his own costs litigating dischargeability in bankruptcy court. And even if a party were required to seek an advance determination, respondents did so here. Petitioner's only response is that respondents should have gone to the bankruptcy court, rather than state court. But the state court had concurrent jurisdiction to decide the issue. And once the parties ultimately were in bankruptcy court, that court also decided the issue in respondents' favor.

D. The Court should affirm the court of appeals' judgment. Under any standard except petitioner's, respondents should not be held in contempt. Neither the discharge order nor the Bankruptcy Code made clear whether respondents' claim for post-discharge attorneys' fees was impermissible under the discharge

order. Circuit precedent supported respondents' argument for attorneys' fees, and both the state court and the bankruptcy court agreed with respondents' view. There is no question that respondents acted in good faith. Under this Court's precedents, there can be no contempt. See *California Artificial Stone Paving Co.*, 113 U.S. at 618 ("[I]f the judges disagree there can be no judgment of contempt."). The Court should affirm the judgment below.

ARGUMENT

A BANKRUPTCY COURT SHOULD NOT HOLD A CREDITOR IN CONTEMPT FOR VIOLATING A DISCHARGE ORDER WHEN THE CREDITOR HAS A REASONABLE, GOOD-FAITH BELIEF THAT THE ORDER DOES NOT PROHIBIT HIS CONDUCT

The question in this case is whether a person should be held in contempt of bankruptcy court for violating a discharge order when he relied in good faith on a state-court decision holding that the discharge order did not apply to his conduct. The answer is no. The bankruptcy court has the discretion to impose contempt sanctions when "necessary or appropriate." 11 U.S.C. 105(a). It is neither necessary nor appropriate to hold a person in contempt when he had a reasonable, good-faith belief that the order did not apply to his conduct. The government substantially agrees.

Petitioner advocates a near-strict-liability rule, one that would require creditors be held in contempt even when they have good reason to believe they are complying with a court order. That rule cannot be reconciled with the permissive, flexible text of Section 105 or with the serious nature of contempt. And it would be bad for the bankruptcy system because it would skew too far in favor of debtors and would chill

creditors from collecting on non-discharged debts. The Court should reject that approach.

A. Under Section 105 And Traditional Principles Of Contempt, A Reasonable, Good-Faith Belief Precludes Contempt Sanctions

The bankruptcy court has the authority to take any action "necessary or appropriate" to enforce a discharge order. 11 U.S.C. 105(a). Under the traditional equitable principles governing contempt, it is not "necessary" or "appropriate" for a court to hold a person in contempt when that person had a reasonable, good-faith belief that the order did not apply to his conduct.

1. Section 105 authorizes bankruptcy courts to impose contempt sanctions when "necessary or appropriate" to enforce court orders

This case concerns a bankruptcy court's enforcement of a discharge order. The analysis starts with 11 U.S.C. 105(a), the provision of the Bankruptcy Code that gives bankruptcy courts the authority to enforce their own orders. It states:

> The court *may* issue any order, process, or judgment that is *necessary or appropriate* to carry out the provisions of this title. No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, sua sponte, taking any action or making any determination *necessary or appropriate* to enforce or implement court orders or rules, or to prevent an abuse of process.

Ibid. (emphases added).

Section 105(a), by its plain language, gives bankruptcy courts broad discretionary authority to address order violations, including through contempt sanctions. The use of the word "may" establishes that the courts' authority is discretionary, not mandatory. See, *e.g.*, *Lopez* v. *Davis*, 531 U.S. 230, 241 (2001). The words "necessary or appropriate" give bankruptcy courts "broad equitable power" to decide how to effectuate their orders. *Johnson* v. *Home State Bank*, 501 U.S. 78, 88 (1991); see *Marrama* v. *Citizens Bank of Mass.*, 549 U.S. 365, 375 (2007). And the authorization to use "any order, process, or judgment" to "enforce * * * court orders" establishes that bankruptcy courts have a range of options available, including contempt and measures less severe than contempt. See *First State Bank of Roscoe* v. *Stabler*, 914 F.3d 1129, 1140 (8th Cir. 2019) (Section 105 authority includes contempt authority).[5]

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[5] Many lower courts have held that bankruptcy courts have inherent authority (in addition to statutory authority) to enforce their orders through contempt. See Barbara D. Gilmore, *Contempt and Sanction Powers of the Bankruptcy Court*, 18 J. Bankr. L. & Prac. 6 Art. 1, at n.43 (2009) (citing cases); see also Pet. Br. 18-19; U.S. Br. 4. This Court has not definitively decided the issue. See *Law* v. *Siegel*, 571 U.S. 415, 420-421 (2014) (bankruptcy courts "may * * * possess" inherent authority to sanction abusive litigation practices). There is no need to address inherent authority here, because the bankruptcy court imposed sanctions under its Section 105 authority, Pet. App. 12a n.4, and no party has argued that the bankruptcy court's inherent contempt authority is broader than its statutory contempt authority.

2. *It is neither "necessary" nor "appropriate" to hold a person in contempt for violating a court order when he has a reasonable, good-faith belief that his conduct is allowed*

Whether it is "necessary" or "appropriate" to hold a litigant in contempt for violating a bankruptcy discharge order is informed by traditional equitable principles that apply in contempt proceedings.

"Recognizing the contempt power's virility and damage potential, courts have created a number of prudential principles designed to oversee its deployment." *Project B.A.S.I.C.* v. *Kemp*, 947 F.2d 11, 16 (1st Cir. 1991). It is appropriate to read Section 105 in conjunction with those principles, because the words "necessary and appropriate" incorporate equitable principles, *Johnson*, 501 U.S. at 88, and contempt is itself equitable in nature, see, *e.g.*, *Leman* v. *Krentler-Arnold Hinge Last Co.*, 284 U.S. 448, 457 (1932).

Three related equitable principles apply here. Those principles, taken together, establish that when a creditor believes in good faith that an ambiguous discharge order does not apply to his conduct, it is neither "necessary" nor "appropriate" to hold him in contempt.

a. Contempt is a severe sanction, designed for deliberate disobedience of a court order

First, contempt of court is a serious sanction, designed for the situation in which a person deliberately disobeys a court order. "Contempt is a disregard of, or disobedience to, the rules or orders of a legislative or judicial body." Edward M. Dangel, *Contempt* § 1, at 2 (1939) (cited in *Black's Law Dictionary* 385 (10th ed. 2014, definition of "contempt")); see, *e.g.*, *Miriam-*

Webster's Collegiate Dictionary 250 (10th ed. 1996) (defining "contempt" as "willful disobedience to or open disrespect of a court, judge, or legislative body").

Contempt is a "severe remedy." *California Artificial Stone Paving Co.* v. *Molitor*, 113 U.S. 609, 618 (1885). Being held in contempt is stigmatizing, even apart from any monetary sanctions that might be imposed. See, *e.g.*, *Mitchell* v. *Helena Wholesale, Inc.*, 163 F. Supp. 101, 105 (E.D. Ark. 1958) (noting the "serious stigma" that attaches to a contempt finding). Attorneys held in contempt may be required to disclose that fact to other courts, see, *e.g.*, D.D.C. Local Civ. R. 83.15(b), or may be reported to the state bar, see, *e.g.*, Cal. Bus. & Prof. Code § 6086.7(a). See also *SerVaas Inc* v. *Mills*, 661 Fed. Appx. 7, 9-10 (2d Cir. 2016) (civil-contempt order caused attorneys "reputational harm").

Because contempt is such a serious sanction, it should be imposed sparingly and only when deserved. A court is never required to hold a person in contempt; contempt is discretionary. See Judiciary Act of 1789 § 17, 1 Stat. 83 (giving federal courts "the power * * * to punish by fine or imprisonment, at the discretion of said courts, all contempts of authority in any case or hearing before same"); see also 18 U.S.C. 401 (power of federal court to punish contempt is "at its discretion"). This Court has explained that a court has "various methods by which to ensure compliance with its remedial orders" short of contempt, and it should consider those measures before imposing contempt sanctions. *Spallone* v. *United States*, 493 U.S. 265, 275-276 (1990). Consistent with that view, the Court has repeatedly cautioned that, "in selecting contempt sanctions, a court is obliged to use the least possible power adequate to the end proposed." *Id.* at 276; see *Young* v. *United States ex rel. Vuitton et Fils S.A.*, 481

U.S. 787, 801-802 (1987); *Shillitani* v. *United States*, 384 U.S. 364, 371 & n.9 (1966). The courts of appeals have recognized and applied that principle in civil contempt cases. See *Gascho* v. *Global Fitness Holdings, LLC*, 875 F.3d 795, 799 (8th Cir. 2017) ("Contempt is a measure of last resort, not first resort.").[6]

Accordingly, the starting point is that contempt is serious, and so it generally should be reserved for a "violation of a court order by one who fully understands its meaning but chooses to ignores its mandate." *International Longshoremen's Ass'n, Local 1291* v. *Philadelphia Marine Trade Ass'n*, 389 U.S. 64, 76 (1967).

b. A person should not be held in contempt for violating a court order if he has good reason to believe the order does not apply to his conduct

It has long been established that, because contempt is such a serious sanction, a person should not be held in contempt for violating a court order unless it is clear that the order applies to his conduct.

This Court stated that principle in *California Artificial Stone Paving Co.* v. *Molitor*, 113 U.S. 609 (1885). That case concerned whether a person could be held in contempt for violating an injunction not to infringe a competitor's patents for concrete pavement, when the alleged infringer had "varied his mode of making the pavement" and so it was unclear whether the injunction barred his conduct. *Id.* at 612-613. The Court explained that, because contempt is a "severe remedy," it "should not be resorted to where there is

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[6] See also, *e.g.*, *Ohlander* v. *Larson*, 114 F.3d 1531, 1541 (10th Cir. 1997); *Natural Gas Pipeline Co. of Am.* v. *Energy Gathering, Inc.*, 86 F.3d 464, 467-469 (5th Cir. 1996); *Project B.A.S.I.C.*, 947 F.2d at 16.

fair ground of doubt as to the wrongfulness of the defendant's conduct." *Id.* at 618. The Court remanded the case, stating that, "if the judges [on the court of appeals] disagree" as to whether the injunction applies, "there can be no judgment of contempt." *Ibid.*

The Court applied the same principle in *International Longshoremen's Ass'n, Local 1291* v. *Philadelphia Marine Trade Ass'n*, 389 U.S. 64 (1967). The issue there was whether a labor union could be held in contempt for violating a court order that did not specify the acts prohibited. *Id.* at 73-74. This Court said no: Because "the judicial contempt power is a potent weapon," it cannot be "founded upon a decree too vague to be understood." *Id.* at 76. Contempt is reserved for "a violation of a court order by one who fully understands its meaning but chooses to ignore its mandate." *Ibid.*; see also *Schmidt* v. *Lessard*, 414 U.S. 473, 476 & n.2 (1974) (per curiam) (stating the same rule).

The courts of appeals all recognize that a person cannot be held in contempt for violating a court order unless the order clearly applies to his conduct. Most circuits articulate the principle as a requirement that an order be "clear and unambiguous" (or "specific and definite") before it can serve as a basis for contempt.[7]

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[7] See, *e.g.*, *Project B.A.S.I.C.*, 947 F.2d at 16 (civil contempt is appropriate "only if the putative contemnor has violated an order that is clear and unambiguous"); *In re General Motors Corp.*, 61 F.3d 256, 259 (4th Cir. 1995) (order must be "clear and unequivocal"); *Grace* v. *Center for Auto Safety*, 72 F.3d 1236, 1241 (6th Cir. 1996) (order must be "clear and unambiguous" (internal quotation marks omitted)); *SEC* v. *Hyatt*, 621 F.3d 687, 692 (7th Cir. 2010) (contempt appropriate only when order "sets forth an unambiguous command"); *Imageware, Inc.* v. *U.S. W. Comm'ns*, 219 F.3d 793, 797 (8th Cir. 2000) ("No one should be held in contempt for violating an ambiguous order."); *Balla* v. *Idaho State Bd. of*

The Federal Circuit employs the "fair ground of doubt" standard (*California Paving* was, after all, a patent case). See *Tivo Inc.* v. *Echostar Corp.*, 646 F.3d 869, 882 (Fed. Cir. 2011) (en banc). The Third Circuit asks whether there is "ground to doubt the wrongfulness of the conduct." *Fox* v. *Capital Co.*, 96 F.2d 684, 686 (3d Cir. 1938); see *FTC* v. *Lane Labs-USA, Inc.*, 624 F.3d 575, 582 (3d Cir. 2010). And the Second Circuit asks whether there is a "fair ground of doubt" about whether the order applies, which depends in part on whether the order was "clear and unambiguous." *King* v. *Allied Vision, Ltd.*, 65 F.3d 1051, 1058 (2d Cir. 1995). In applying those rules, courts construe ambiguities in favor of the alleged contemnor. See, *e.g.*, *Axia NetMedia Corp.* v. *Massachusetts Tech. Park Corp.*, 889 F.3d 1, 13 (1st Cir. 2018); *Gascho*, 875 F.3d at 800; *Chao* v. *Gotham Registry, Inc.*, 514 F.3d 280, 292 (2d Cir. 2008); *Grace*, 72 F.3d at 1241.

Despite the variations in language, the principle is the same: A person cannot be held in contempt for violating an ambiguous order. This rule rests on basic notions of notice and fairness. See *Schmidt*, 414 U.S. at 476 ("[B]asic fairness requires that those enjoined receive explicit notice of precisely what conduct is outlawed."); *Gascho*, 875 F.3d at 800 ("[I]t would be unfair for courts to hold a party in contempt unless that party was disobeying a clear and unequivocal court

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Corr., 869 F.2d 461, 465 (9th Cir. 1989) ("[C]ontempt is appropriate only when a party fails to comply with a court order that is both specific and definite."); *Reliance Ins. Co.* v. *Mast Constr. Co.*, 84 F.3d 372, 376 (10th Cir. 1996) (order must be "clear and unambiguous" to support contempt); *Georgia Power Co.* v. *NLRB*, 484 F.3d 1288, 1291 (11th Cir. 2007) (order must be "clear and unambiguous"); *Armstrong* v. *Executive Office of President*, 1 F.3d 1274, 1289 (D.C. Cir. 1993) (order must be "clear and unambiguous" (internal quotation marks omitted)).

command."); *Inmates of Allegheny Cty. Jail* v. *Wecht*, 754 F.2d 120, 129 (3d Cir. 1985) (no contempt unless putative contemnors "have been given specific notice of the norm to which they must pattern their conduct"). If there is a reasonable basis to believe that the order does not apply, then the putative contemnor lacks the necessary notice, and he cannot be said to have deliberately disregarded the court's command. *International Longshoremen's Ass'n*, 389 U.S. at 76. And if a court already has held that the order is inapplicable, then the putative contemnor necessarily has that reasonable basis. *California Artificial Stone Paving Co.*, 113 U.S. at 618.

c. Good faith and bad faith matter in contempt proceedings

Because contempt is a sanction for "deliberate defiance" of a court order, *Maggio* v. *Zeitz*, 333 U.S. 56, 76 (1948), good faith and bad faith matter. That understanding is consistent with the ordinary meaning of the word "contempt," which suggests more than a mere failure to follow a court's order, but "scorn." *Oxford English Dictionary* 813 (2d ed. 1989).

This Court has recognized the importance of good faith in determining where a party that acted reasonably should be held in contempt. In *In re Watts*, 190 U.S. 1 (1903), this Court considered whether a federal district court exercising bankruptcy jurisdiction should hold an attorney in contempt when he acted on a good-faith belief that state courts (rather than federal courts) had jurisdiction over certain property and had a state-court order to that effect. *Id.* at 26, 29. This Court held that there could be no contempt, because the attorney "act[ed] in good faith and in the honest belief that his advice [was] well founded," and "the state court agreed" with him. *Id.* at 29, 32. The Court emphasized both the attorney's "good faith" and

the fact that he relied on a state-court ruling. See *id.* at 27, 29, 32 (repeatedly noting the attorney's good faith); *id.* at 29-30 (state court's jurisdiction "had been properly invoked, and been properly exercised, and was not open to collateral attack"). In reaching its conclusion, the Court did not rely solely on the objective reasonableness of the attorney's belief: "Want of intention to commit contempt is entitled to great weight in such circumstances." *Id.* at 35.

The Court similarly considered reasonable good faith in *Maness* v. *Meyers*, 419 U.S. 449 (1975). In that case, the lower court had held an attorney in contempt for advising his client to invoke the Fifth Amendment privilege against compelled self-incrimination in response to a subpoena for obscene materials in the client's possession. *Id.* at 451-452, 455. The Court reversed, emphasizing both the sincerity of the lawyer's belief and its reasonableness. The Court noted that the lawyer believed in "good faith" that the material would be incriminating. *Id.* at 458; see *id.* at 455 (noting that "the record shows no indication whatsoever of contumacious conduct" and that the lawyer's "good-faith belief" was undisputed); *id.* at 463 ("[T]he issue here is whether petitioner, as counsel, can be penalized for good-faith advice to claim the privilege."). And the Court probed the basis for that belief, concluding that the attorney had, "at the very least, a reasonable basis" to believe the subpoenaed materials were incriminating. *Id.* at 469. Because the attorney had a reasonable, good-faith basis for the advice he gave, he could not be held in contempt. *Id.* at 470.

This Court's decision in *McComb* v. *Jacksonville Paper Co.*, 336 U.S. 187 (1949), is not to the contrary. That decision stands for the proposition that a good-faith belief, without more, is insufficient to avoid contempt. In *McComb*, the Court upheld civil contempt

sanctions against an employer who had failed to comply with an injunction entered to enforce the federal labor laws. *Id.* at 189. The Court rejected the employer's subjective good-faith defense: "An act does not cease to be a violation of a law and of a decree merely because it may have been done innocently." *Id.* at 191; see *Merrimack River Sav. Bank* v. *City of Clay Ctr.*, 219 U.S. 527, 536 (1911) ("honest[] belie[f]" by itself is not enough to avoid contempt). (The Court also suggested that the employer was acting in bad faith, noting that the employer had a "record of continuing and persistent violations." *McComb*, 336 U.S. at 192; see U.S. Br. 26.)

At the same time, the *McComb* Court recognized that a person who acted reasonably *and* in good faith could avoid contempt sanctions. The Court noted that, rather than stick its head in the sand and risk contempt sanctions, the employer could have sought "clarification" from a court about the scope of the order. *McComb*, 336 U.S. at 192. If the employer had done so, the Court suggested, it would not face contempt sanctions. *Id.* at 192-193. The Court thus did not hold that a reasonable, good-faith belief in the legality of one's conduct is "irrelevant" (Pet. Br. 14); indeed, it suggested the opposite. And *McComb* certainly should not be read to definitively resolve that issue, both because the Court apparently believed the employer was acting in bad faith, and because the Court did not consider any reasonable basis for the employer's belief. When the putative contemnor has had a reasonable, good-faith belief that his conduct did not violate a court order, as in *Watts* and *Maness*, the Court has refused to impose contempt sanctions.[8]

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[8] In explaining why a subjective good-faith belief was not itself enough to avoid contempt, the *McComb* Court stated that "it

Finally, this Court has suggested that bad faith itself may be a sufficient basis to impose contempt sanctions. Courts generally can impose sanctions "when a party has acted in bad faith, vexatiously, wantonly, or for oppressive reasons." *Chambers* v. *NASCO, Inc.*, 501 U.S. 32, 45-46 (1991) (citing cases) (internal quotation marks omitted). That includes when a party has "show[n] bad faith by * * * hampering enforcement of a court order." *Hutto* v. *Finney*, 437 U.S. 678, 689 n.14 (1978); see *Marrama*, 549 U.S. at 383 (Alito, J., dissenting) (bankruptcy courts may "craft various remedies for a range of bad faith conduct," including "holding the debtor in contempt").

Accordingly, this Court's decisions establish that a court exercising its discretionary, equitable contempt authority may take good faith and bad faith into account. An asserted good-faith belief by itself generally is not enough to avoid contempt sanctions, but a reasonable, good-faith belief is sufficient. The courts of appeals have recognized these principles as well.[9]

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matters not with what intent the defendant did the prohibited act." 336 U.S. at 191. Petitioner interprets (Br. 13) that language to prohibit any consideration of good faith and bad faith in imposing contempt sanctions. But the language must be read in context and consistent with the Court's other decisions.

[9] See, *e.g.*, *Chao*, 514 F.3d at 293 (no contempt when defendant made "diligent and energetic efforts to comply in a reasonable manner" with a court order); *Harley-Davidson, Inc.* v. *Morris*, 19 F.3d 142, 149 (3rd Cir. 1994) (recognizing that "a good faith and reasonable interpretation of a court order" can preclude contempt); *Illinois Migrant Council* v. *Pilliod*, 540 F.2d 1062, 1071 n.11 (7th Cir. 1976) (a court should not hold in contempt those "who act in good faith and who reasonably believe their actions are justifiable"); *In re Spencer*, 868 F.3d 748, 751-752 (8th Cir. 2017) (no contempt where the defendant "had a reasonable basis for believing" that its actions were permissible, "[e]ven if [it] was

That makes sense, because barring all consideration of good faith would be inconsistent with the Court's repeated admonition to impose contempt sanctions only when truly necessary. See *Gompers* v. *Buck's Stove & Range Co.*, 221 U.S. 418, 451 (1911) ("[T]he very amplitude of the [contempt] power is a warning to use it with discretion, and a command never to exert it where it is not necessary or proper.").

3. Respondents' rule is fair and administrable

a. A rule that allows for consideration of reasonable good faith is necessary for the fair and efficient administration of the bankruptcy system. Not all debts are discharged in bankruptcy. Although the Bankruptcy Code includes a list of exceptions to discharge, 11 U.S.C. 523(a), 1328(a), questions sometimes arise about whether those exceptions apply in a given case. Those questions typically are not answered within the four corners of the discharge order. Although injunctions in civil cases generally must set out their terms with specificity, see Fed. R. Civ. P. 65(d), that requirement does not apply to discharge orders. And, for most debts, debtors and creditors are not required to determine dischargeability in advance. See 11 U.S.C.

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wrong on the merits"); *Vertex Distrib., Inc.* v. *Falcon Foam Plastics, Inc.*, 689 F.2d 885, 890 (9th Cir. 1982) ("[I]f a defendant's action appears to be based on a good faith and reasonable interpretation of (the court's order), he should not be held in contempt." (internal quotation marks omitted)); *Spectra Sonics Aviation, Inc.* v. *Ogden City*, 931 F.2d 63, 1991 WL 59369, at *2 (10th Cir. Apr. 19, 1991) (Tbl.) ("[A] defendant may be absolved from a finding of civil contempt if * * * the defendant's action appears to be based on a good faith and reasonable interpretation of the order."); *Newman* v. *Graddick*, 740 F.2d 1513, 1525 (11th Cir. 1984) ("[A] person who attempts with reasonable diligence to comply with a court order should not be held in contempt.").

523(c)(1) (specifying that only three of nineteen categories of debt are exempted from discharge without a prior determination of dischargeability); *United Student Aid Funds, Inc.* v. *Espinosa*, 559 U.S. 260, 268-269 (2010) (debtor must file an adversary complaint in his bankruptcy case to discharge student loan debt). Accordingly, in Chapter 7 cases, bankruptcy courts use a form order that simply states that a "discharge * * * is granted" to the debtor and does not specify which debts are and are not covered by the order. See U.S. Courts, *Official Form 318*, at 1, perma.cc/2LPL-F2DG.[10]

The reasonable, good-faith belief standard fairly accounts for occasional uncertainties about the scope of a discharge order. A discharge order operates as an injunction, and creditors must comply with it. 11 U.S.C. 524(a)(2). But if a creditor believes, in good faith and for good reason, that the discharge order does not apply to his conduct, then he has not "deliberate[ly] defi[ed]" (*Maggio*, 333 U.S. at 76) the discharge order and should not be branded a contemnor. If every creditor who violated a discharge order were held in contempt no matter the circumstances, it would discourage creditors from attempting to collect on non-discharged debts, effectively expanding the scope of discharge orders. And it would serve as a strong disincentive for attorneys to take on cases for creditors to collect on non-discharged debts. See *Watts*, 190 U.S. at 35 (attorneys must be able to "fearless[ly] discharge * * * their dut[ies]" without facing

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[10] The form states that "[m]ost debts are covered by the discharge, but not all"; gives some examples of debts that are not discharged ("domestic support obligations," "most taxes," and "most student loans"); and warns that "the law is complicated" and so "you should consult an attorney to determine the exact effect of a discharge in this case." *Official Form 318* at 1-2.

contempt sanctions). Here, for example, petitioner sought contempt sanctions not only against his former business partners, but also against their lawyer. Pet. App. 55a.

This case proves the need for a reasonable, good-faith standard. Respondents did everything right. They believed, based on circuit precedent, that they could obtain attorneys' fees from petitioner based on his post-discharge conduct. Since they were already in state court (and had only 14 days to seek attorneys' fees, see Or. R. Civ. P. 68(C)(4)(a)), they informed the state court of petitioner's discharge order and asked the state court to resolve whether the order allowed them to seek attorneys' fees. Petitioner did not object. The state court held that the discharge order did not bar attorneys' fees, and respondents reasonably relied on that holding.[11] As the BAP explained, respondents "should be praised, not sanctioned" (Pet. App. 47a) for their careful efforts to comply with the discharge order.[12]

This does not mean that a debtor has no remedy for violation of a discharge order. A court may order

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[11] Petitioner contends (Br. 20 n.9, 22 n.11) that respondents could not rely on the state court's decision because it was contrary to the discharge order and therefore "void." But the state court was deciding the scope of the discharge order, which it had jurisdiction to do. Even if that decision later were overturned on appeal, respondents were entitled to rely on it at the time.

[12] In all events, punitive damages are inappropriate in this case. Respondents were not afforded the procedural protections necessary in criminal contempt proceedings, see *International Union, United Mine Workers of Am.* v. *Bagwell*, 512 U.S. 821, 833-834 (1994); they reasonably and in good faith attempted to comply with the discharge order; and the bankruptcy court's rationale for punitive damages makes no sense on its own terms, see Pet. App. 75a.

the creditor to comply with the discharge order (by, for example, returning property the creditor has collected). Further, the court's ruling will resolve the dischargeability issue going forward. See U.S. Br. 21.

b. A reasonable, good-faith belief rule is easily administrable, because the Bankruptcy Code requires bankruptcy courts to decide similar questions in a wide variety of circumstances. Many provisions in the Code expressly require good faith.[13] For example, a plan may not be confirmed unless it was "proposed in good faith." 11 U.S.C. 1129(a)(3), 1325(a)(3). In assessing "good faith," bankruptcy courts do not simply rely on the debtor's assertion of good faith, but instead look to the totality of the circumstances, including objective factors such as the plan's feasibility. See, *e.g.*, *In re Chaffin*, 816 F.2d 1070, 1074 (5th Cir. 1987); *In re Pertuset*, 492 B.R. 232, 250, 255-258 (Bankr. S.D. Ohio), aff'd, 485 B.R. 478 (B.A.P. 6th Cir. 2012).

Similarly, the Code authorizes a trustee to void fraudulent transfers by the debtor, but includes a safe harbor if the transferee accepted the debtor's property for value and in good faith. 11 U.S.C. 548(c), 550(b). Bankruptcy courts applying this provision routinely evaluate whether a transferee acted in good faith, considering both the transferee's subjective belief and objective factors, such as whether the transferee performed a "diligent investigation." *In re American Hous. Found.*, 785 F.3d 143, 164 (5th Cir. 2015) (internal quotation marks omitted); see, *e.g.*, *In re Taneja*, 743 F.3d 423, 430 (4th Cir. 2014) (reviewing transferee's belief and "the customary practices of the

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[13] See, *e.g.*, 11 U.S.C. 362(c)(3)(B)-(C), (c)(4)(B), (c)(4)(D), (k)(2), (n)(1)(D); 11 U.S.C. 521(i)(4); 11 U.S.C. 548(c); 11 U.S.C. 550(b); 11 U.S.C. 1129(a)(3); 11 U.S.C. 1225(a)(3); 11 U.S.C. 1325(a)(3).

industry in which the transferee operates" (internal quotation marks omitted)).[14]

The point of these examples is not that the good-faith inquiry under each of the provisions is identical, but rather that bankruptcy courts routinely decide whether a party acted in good faith. Further, in doing so, bankruptcy courts do not simply accept a party's assertion of good faith but instead look behind that belief to determine the basis for it. Accordingly, there is no reason that it will be "difficult" for bankruptcy courts to make similar determinations in the context of enforcing discharge orders, or that creditors will be able to escape contempt by "conjur[ing] up pretextual reasons for pushing [a] discharge's limits." Pet. Br. 24.

4. The court of appeals correctly found contempt sanctions inappropriate, and its language about "unreasonable" good-faith beliefs is dictum

The court of appeals correctly recognized that, to find a creditor in contempt for violating a discharge order, the court must find that the creditor knew the order applied to his conduct but intentionally violated the order anyway. Pet. App. 11a; see *International Longshoremen's Ass'n*, 389 U.S. at 76 (contempt appropriate for "violation of a court order by one who fully understands its meaning but chooses to ignore its mandate"). The court also correctly determined that a person cannot meet that standard when he has

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[14] Bankruptcy courts also have their own sanctions rule, which requires that filings be made in good faith and with sufficient legal basis. See Fed. R. Bankr. P. 9011 (parallel to Fed. R. Civ. P. 11). That rule requires consideration of both an attorney's beliefs and the basis for those beliefs. See, *e.g.*, *In re Mroz*, 65 F.3d 1567, 1573 (11th Cir. 1995).

a "good faith belief that the discharge injunction does not apply" to his conduct. Pet. App. 12a.

In determining whether respondents had such a good-faith belief, the court assessed both respondents' subjective beliefs and the objective basis for those beliefs. The court noted that it was undisputed that respondents "possessed a good faith belief that the discharge injunction did not apply to their claims." Pet. App. 13a. But the court did not stop there. Rather, the court of appeals, like the BAP before it, reviewed the facts establishing the basis for respondents' belief, including the circuit precedent on which their claim was based and the proceedings in state court. *Id.* at 10a; see *id.* at 46a-47a, 50a (BAP); see also *id.* at 44a (BAP's recognition that self-serving claim of good faith is not sufficient). The court of appeals explained that respondents "relied on the state court's judgment that the discharge injunction did not apply to their claim for post-petition attorneys' fees." *Id.* at 13a.

Petitioner (Br. 3, 10) and the government (Br. 21-22) focus on the court's language about "unreasonable" good faith beliefs. But that language was dictum. No one in this case ever suggested that respondents' belief was an unreasonable one, and the court of appeals did not find that it was. The "even if unreasonable" language therefore was not necessary to decide the issue before the court. See, *e.g.*, *Seminole Tribe of Fla.* v. *Florida*, 517 U.S. 44, 67 (1996) (language in an opinion not necessary to the judgment is dicta).

Further, the language about unreasonable good-faith beliefs also was dictum in the case in which it first arose. The court of appeals first used this language in *In re ZiLOG, Inc.*, 450 F.3d 996 (9th Cir. 1996), which addressed whether a debtor's employees could be held in contempt for violating a discharge order when they relied on an email from the debtor's

general counsel and a notice from bankruptcy court suggesting the discharge order did not apply to their claim. *Id.* at 998, 1003-1005. The court reversed and remanded because the bankruptcy court had presumed that the employees knew the discharge order applied to their claims, rather than finding facts on that point. *Id.* at 1007-1010. In a footnote, the court stated that, "[t]o the extent that the deficient notices led the [employees] to believe, even unreasonably, that the discharge injunction did not apply to their claims," they should not be held in contempt. *Id.* at 1009 n.14.

The court of appeals did not assess the reasonableness of the employees' belief; it had "no evidentiary basis on which to dispose of the contempt claim." *Zi-LOG*, 450 F.3d at 1009. Further, the court suggested that the employees' reliance on representations from counsel indicated that their belief was a reasonable one. *Id.* at 1005-1006 (court could "easily see" how the employees would have believed their rights were not implicated by the bankruptcy filing). The "even unreasonably" language thus was a stray passage that had no effect on the decision.

The Ninth Circuit has not repeated the language about unreasonable good-faith beliefs in any other reported decisions. And the court has never confronted a case where a creditor sought to avoid contempt for violating a discharge order because of an unreasonable good-faith belief. Under the circumstances, this Court can and should disapprove that stray language and affirm the judgment. See *Air & Liquid Sys. Corp.* v. *Devries*, No. 17-1104, 2019 WL 1245520, at *6 (Mar. 19, 2019) (Court "d[id] not agree with all of the reasoning of" the court of appeals but nonetheless affirmed its judgment).

B. The Federal Government's Rule Is Substantially The Same And Leads To The Same Result Here

1. The government advocates an objective reasonableness rule that permits consideration of good faith

Like respondents, the federal government begins its analysis with the recognition that the Bankruptcy Code incorporates traditional equitable principles applicable in contempt proceedings. The government's analysis traces a slightly different statutory path, but it arrives at essentially the same place.

a. The government explains that, because a discharge order "operates as an injunction" against the collection of discharged debts, 11 U.S.C. 524(a)(2), the "principles that govern courts' traditional powers to enforce their injunctions" apply in bankruptcy contempt proceedings, U.S. Br. 14. One such principle, the government observes, is that "civil-contempt sanctions may not be imposed if there is an objectively fair ground of doubt that the conduct at issue violated the injunction." *Id.* at 14-15. The government derives that rule from *California Artificial Stone Paving Co.*, *supra*. U.S. Br. 15-16.

The government also relies on decisions of this Court and the courts of appeals recognizing that a court order, including an injunction, must be "clear and unambiguous" to serve as a basis for contempt sanctions. *United States* v. *Saccoccia*, 433 F.3d 19, 27-28 (1st Cir. 2005).[15] And the government notes an im-

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[15] See U.S. Br. 16-17 (citing *International Longshoremen's Ass'n*, 389 U.S. at 76 (order cannot be "too vague to be understood"); *CFE Racing Prods., Inc.* v. *BMF Wheels, Inc.*, 793 F.3d 571, 598 (6th Cir. 2015) (requiring a "definite and specific order of the

portant corollary to its rule – that courts should "resolve ambiguities [in an order] in favor of the putative contemnor." U.S. Br. 17 (citing cases). These are longstanding equitable principles that appropriately inform the bankruptcy court's exercise of its bankruptcy contempt power. See pp. 21-23, *supra*.

b. Although the government describes its legal standard as one of "objective reasonableness," U.S. Br. 11, the government appears to permit consideration of both good faith and bad faith.

The government recognizes that a bankruptcy court may consider good faith in deciding whether a creditor's position was reasonable. The government first observes that a creditor's "subjective good-faith belief, standing alone, does not preclude a finding of civil contempt." U.S. Br. 23; see *id.* at 21-23. (That is consistent with this Court's decision in *McComb*. See 336 U.S. at 191.) The government then acknowledges that good faith *can* preclude civil contempt when combined with other factors: "[A] defendant's subjective good-faith belief that it is complying with an injunction might sometimes be relevant to the determination whether the belief was objectively reasonable." U.S. Br. 23; see *id.* at 11 (similar).

The government's brief does not elaborate, but it appears to envision a bankruptcy court considering a putative contemnor's good faith in a totality-of-the-circumstances approach to reasonableness. Doing so

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court" (internal quotation marks omitted)); *Latino Officers Ass'n City of N.Y., Inc.* v. *City of N.Y.*, 558 F.3d 159, 164-165 (2d Cir. 2009) (using both "fair ground of doubt" and "clear and unambiguous" language (internal quotation marks omitted)); *Jove Eng'g, Inc.* v. *IRS*, 92 F.3d 1539, 1546 (11th Cir. 1996) (order must be "clear, definite, and unambiguous" to support contempt)).

would be consistent with traditional equitable principles, as expressed in decisions of this Court. See *Maness*, 419 U.S. at 469; *Watts*, 190 U.S. at 32; see also *Maggio*, 333 U.S. at 76 (court considering contempt "is obliged to weigh * * * all the evidence properly before it in the contempt proceeding in determining whether * * * failure [to comply] constitutes deliberate defiance").

The government also appears to recognize that bad faith can support imposition of contempt sanctions. The government notes that "subjective bad intent is not *required* to support a finding of civil contempt." U.S. Br. 22 (emphasis added). But the government describes *McComb* as involving "bad faith" and notes that bad faith "has traditionally supported civil-contempt sanctions." *Id.* at 26 (citing *Chambers*, 501 U.S. at 50 (upholding civil-contempt sanctions for "bad-faith conduct")). This recognition that bad-faith conduct may be a basis for contempt is consistent with equitable principles and other sanctions regimes. See *Hutto*, 437 U.S. at 689 n.14.

2. Any differences between the government's rule and respondents' rule do not matter here

There appears to be little daylight between respondents' approach and the government's approach, and certainly none that would matter to the outcome in this case.

Respondents' view is that a person should not be held in contempt for violating a discharge order if he has a reasonable, good-faith belief that the order does not apply to his conduct. The government's view is that a person should not be held in contempt for violating a discharge order if there is a "fair ground of doubt" that the order applies to his conduct, and good

faith is relevant to whether a "fair ground of doubt" exists.

The result in this case is the same under either approach. Both rules encompass the principle that a person cannot be held in contempt for violating an order that does not clearly apply to his conduct. And both permit consideration of good faith. Here, it is undisputed that respondents acted in good faith. Pet. App. 13a. And respondents plainly had good reason to believe the discharge order did not apply to their request for attorneys' fees – especially after they obtained a state-court decision in their favor. See *California Artificial Stone Paving Co.*, 113 U.S. at 618 ("If the judges disagree there can be no contempt."). Accordingly, respondents should prevail under either approach.

Perhaps there are situations in which respondents' approach and the government's approach would produce different results. But it is not apparent what those circumstances could be. Respondents and the government agree that bad faith is not required for contempt sanctions, U.S. Br. 22, 26; that subjective good faith by itself is not enough to avoid contempt, *id.* at 22; and that good faith is a relevant factor in deciding whether contempt sanctions are justified, *id.* at 11, 23, 26. The approaches may differ in precisely how they account for good faith: Respondents view good faith as a prerequisite to avoiding contempt sanctions, and the government characterizes good faith as a relevant factor in that analysis. *Id.* at 11, 23. But because everyone agrees respondents acted in good faith here, this case does not present the opportunity to probe this potential difference.

Whether labeled a totality-of-the-circumstances approach to reasonableness, or an objectively reasonable, good-faith belief requirement, the approaches

are substantially the same. And, most important here, respondents cannot be held in contempt of court under either approach.

C. The Court Should Not Adopt Petitioner's Proposed Rule

1. Petitioner proposes a near-strict-liability rule

In petitioner's view, a creditor *must* be held in contempt if the creditor knows of the discharge order and intended the actions that violate it. Pet. Br. 18-19. Under this rule, it does not matter if a creditor acted reasonably and in good faith.

Petitioner borrows his rule from the Eleventh Circuit's decision in *In re Hardy*, 97 F.3d 1384 (1996). Under *Hardy*, a creditor has the requisite knowledge if he is "aware of the discharge injunction." *Id.* at 1390. The creditor need not know that the discharge injunction actually applied to his conduct, only that the debtor "invoked" the discharge injunction. *Ibid.* And the requirement of an "intentional violation" is met so long as the creditor "intended the actions" that violated the order (*i.e.*, he did not take those actions by accident). *Ibid.*; see 22B Charles A. Wright et al., *Federal Practice & Procedure* § 5250 (2d ed. 2018) (lack of intent can be proven through evidence of "mistake, accident, duress, or intoxication").[16]

Petitioner's standard requires imposition of contempt sanctions even for parties acting reasonably

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[16] Petitioner characterizes his rule as settled law in a majority of circuits and suggests that Congress has acquiesced in that rule. See Pet. Br. 13, 15, 17, 18. That is not correct. The courts of appeals overwhelmingly have recognized that a person cannot be held in contempt when he acts in good faith and has a reasonable basis to believe that a court order does not apply to his conduct. See pp. 21-23 & notes 7, 9, *supra*.

and in good faith. As the government and the courts below recognized, this is a "near-strict-liability standard." U.S. Br. 11; see Pet. App. 36a, 48a, 49a (BAP's characterization of test as "akin to a strict liability test," a "'strict liability' analysis," and "strict liability"); *id.* at 60a (bankruptcy court called petitioner's view a "strict liability" standard). As long as the creditor has some notice of the discharge order (which need not be notice from the bankruptcy court, see Pet. App. 61a), and the creditor acted volitionally, the creditor is branded a contemnor. Even if the creditor has very good reason to believe the discharge order does not apply to his conduct (say, a decision by a court of competent jurisdiction that the order does not apply to him), petitioner would require that the creditor be held in contempt of court.

2. Petitioner's near-strict-liability rule is inconsistent with Section 105 and traditional equitable principles

Petitioner's rule is inconsistent with the Bankruptcy Code and the traditional equitable principles it incorporates.

Section 105(a) provides that bankruptcy courts "may" take steps "necessary or appropriate" to enforce their own orders. 11 U.S.C. 105(a). This provision does not mandate sanctions in any circumstances. Its permissive language stands in stark contrast to the mandatory language of Section 362(k), which requires the court to award actual damages for certain violations of the automatic stay. See 11 U.S.C. 362(k)(1) (person injured by "willful" violation of automatic stay "shall recover actual damages" unless specified good-faith exception applies). When Congress wanted to require a bankruptcy court to impose sanctions, it did so expressly. And when Congress wanted to guide the bankruptcy court's exercise of its contempt authority,

it did that expressly as well. See 26 U.S.C. 7433(e) (authorizing damages against the United States for IRS employees' willful violations of automatic stay or discharge order).

Further, the words "necessary" and "appropriate" reflect the court's equitable discretion and its flexibility to consider the totality of the circumstances before imposing contempt sanctions. *Johnson*, 501 U.S. at 88; see Pet. Br. 18 (petitioner's recognition that the bankruptcy court's Section 105 authority is "exceptionally broad"). The court can therefore consider any reason why contempt sanctions would be inappropriate, such as a creditor's good-faith, reasonable belief that the order did not apply to his conduct. Petitioner's rule would read all of the equitable discretion out of Section 105(a) by precluding bankruptcy courts from taking good faith into account.

Petitioner's rule also is contrary to traditional equitable principles applicable to contempt. It fails to recognize that contempt is a "potent weapon" that should be applied only when a person disobeys a clear court order. *International Longshoremen's Ass'n*, 389 U.S. at 76; see *Maggio*, 333 U.S. at 76 (contempt is for "deliberate defiance"). It is inconsistent with this Court's repeated admonition to "use the least possible power adequate to the end proposed" in contempt sanctions. *Spallone*, 493 U.S. at 276 (internal quotation marks omitted). It ignores the relevance of good faith and bad faith in equitable proceedings like contempt. See *Hutto*, 437 U.S. at 689 n.14 (bad faith); *Maness*, 419 U.S. at 469 (good faith). And it overlooks the well-established principle that a person cannot be held in contempt for violating a court order unless the order clearly applies to his conduct.

Whether articulated as a requirement of no "fair ground of doubt," *California Artificial Stone Paving*

Co., 113 U.S. at 618, or a "clear and unambiguous" order, *Project B.A.S.I.C.*, 947 F.2d at 16, that principle reflects the common-sense view that a person who had good reason to believe that an order does not apply to him does not deserve contempt sanctions. Those sanctions would not serve the purposes of contempt, and they would raise serious concerns about fairness and lack of notice.

3. Petitioner's justifications for his rule are mistaken

Petitioner provides essentially two justifications for his rule, both of which are mistaken.

a. First, petitioner equates automatic-stay violations and discharge-order violations. Br. 20-21. But there are critical differences between the two. Most notably, Congress expressly circumscribed the remedies available for automatic-stay violations but not discharge-order violations: Congress mandated payment of actual damages for certain "willful" violations of the automatic stay, see 11 U.S.C. 362(k)(1) (moving party "shall recover actual damages"), but gave bankruptcy courts discretion to take "necessary or appropriate" action to address discharge-order violations, 11 U.S.C. 105(a). This difference in language underscores that traditional equitable principles apply here. See U.S. Br. 10.

There are good reasons why Congress treated automatic-stay violations differently than discharge order violations. An automatic stay is entered at the outset of the case, and it benefits all interested parties by preserving the property of the estate. The automatic stay applies equally to debtors and creditors; both can be liable for damages under Section 362(k). Congress reasonably decided that courts should strictly enforce the automatic stay. And even in that

context, Congress required proof of a demanding mental state (willfulness) and limited the available damages when a person believed in good faith that a certain exception to the stay applied. See 11 U.S.C. 362(k)(2).[17]

Petitioner contends (Br. 21) that Congress intended to preclude courts from considering good faith in enforcing discharge orders because it included an express good-faith exception in Section 362(k) but not in Section 105(a). But there was no need to do so in Section 105, because that statute makes sanctions discretionary ("may") and gives the court broad and flexible authority ("necessary or appropriate"), which necessarily includes the authority to consider good faith. Such an exception was necessary in Section 362(k), because payment of damages is mandatory ("shall").

b. Petitioner's other justification for his rule is that debtors are in a fragile financial position, and so creditors should have to pay damages if they take any actions that violate discharge orders. Pet. Br. 22-23. Petitioner's argument misunderstands the nature of contempt, and it would upset the balance of interests of debtors and creditors in bankruptcy proceedings.

First, contempt is not a mere cost-allocation rule designed to "restore the status quo ante." Pet. Br. 19.

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[17] Some courts of appeals have defined "willful," in the context of the automatic-stay provision and the special provision applicable to the IRS, to include merely knowing that the order exists. See, *e.g.*, *IRS* v. *Murphy*, 892 F.3d 29, 35-36 (1st Cir. 2018). That is an unusual definition of "willful." See, *e.g.*, *Black's Law Dictionary* 1834 (10th ed. 2014) ("willful" generally involves "conscious wrong or evil purpose on the part of the actor, or at least inexcusable carelessness"). The Court need not address it here, because this case does not involve an automatic-stay violation or a violation by the IRS.

Rather, it is a sanction on a litigant or lawyer – a "potent weapon" with significant collateral consequences attached. *International Longshoremen's Ass'n*, 389 U.S. at 76. The point of civil contempt is to coerce compliance with a court order, not to improve the financial position of the adverse party. See *Penfield Co. of Cal.* v. *SEC*, 330 U.S. 585, 590 (1948).[18]

Second, there is no thumb on the scales in favor of debtors post-discharge. Of course, many debtors are in dire financial straits when they enter bankruptcy. That is why the Bankruptcy Code affords debtors significant benefits and requires creditors to make significant concessions, including writing off most prepetition debts. 11 U.S.C. 707(b). When the discharge order provides a "fresh start," it clears the slate for both debtors and creditors. *Grogan* v. *Garner*, 498 U.S. 279, 286 (1991). After that fresh start, the normal rules apply, including the rule that each party bears its own costs in litigation. See *Baker Botts L.L.P.* v. *ASARCO LLC*, 135 S. Ct. 2158, 2164 (2015) (American rule for attorneys' fees). Under petitioner's rule, however, a creditor would be forced to bear a debtor's costs long after discharge if the creditor seeks judicial resolution of a discharge order in any forum other than the bankruptcy court and ultimately loses.

Petitioner's near-strict-liability rule would "unduly hinder a creditor's legitimate efforts to collect

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[18] Petitioner relies (Br. 14) on decisions describing civil contempt as "remedial." But those decisions are distinguishing between civil contempt (which is compensatory) and criminal contempt (which is punitive). See *Shillitani*, 384 U.S. at 369-371; *Gompers*, 221 U.S. at 441; see also U.S. Br. 22. They do not override this Court's understanding of contempt as a "potent weapon" and a "severe remedy" designed for deliberate misconduct. *International Longshoremen's Ass'n*, 389 U.S. at 76; *California Artificial Stone Paving Co.*, 113 U.S. at 618.

non-discharged debts." U.S. Br. 27. Allowing creditors to be held in contempt for good-faith attempts to comply with unclear discharge orders will chill them from attempting to resolve those issues and collect on debts. That would effectively enlarge the scope of the discharge injunction, beyond the many concessions creditors already have made. It also would dissuade attorneys from representing those creditors. Such a rule would upset the "delicate balance" Congress struck when it enacted the Bankruptcy Code. *Midland Funding, LLC* v. *Johnson*, 137 S. Ct. 1407, 1415 (2017).

4. Petitioner's requirement that creditors seek advance determinations is misguided

Apparently recognizing the harshness of his rule, petitioner posits that a creditor can avoid contempt sanctions by seeking judicial guidance before attempting to collect on a debt. Pet. Br. 11, 15, 17, 23 n.12. That is no solution.

a. Petitioner's suggestion is inconsistent with the text of the Bankruptcy Code. The exceptions to discharge in the Code are "self-executing" (U.S. Br. 27); a creditor generally is not required to seek court approval to collect on those debts. Congress set up the system that way so that bankruptcy cases could be resolved quickly and efficiently. See *Katchen* v. *Landy*, 382 U.S. 323, 328 (1966). When Congress wished to require that a creditor resolve a question of dischargeability before attempting to collect on a debt, it said so expressly. 11 U.S.C. 523(c)(1). Petitioner's rule would "effectively override" Congress's determination not to require creditors to adjudicate all claims before attempting to collect on debts, thereby complicating and delaying bankruptcy cases. U.S. Br. 27.

Petitioner's "go to bankruptcy court" rule also is inconsistent with his own policy argument. Petitioner's primary justification for his rule is that debtors should not have to bear the costs of post-discharge litigation. For that reason, he argues the respondents should pay his costs of litigating dischargeability in the state proceeding. But if a creditor follows petitioner's rule and asks the bankruptcy court to decide dischargeability, the debtor would have to bear his own costs (including attorneys' fees) in that proceeding, even if the bankruptcy court ultimately ruled in the debtor's favor. See *Baker Botts L.L.P.*, 135 S. Ct. at 2164 (ordinary rule is no fee-shifting); 11 U.S.C. 523(d) (narrow exception allowing fee-shifting only in certain cases in which the court rejects the creditor's contention that credit was obtained by fraud); see also U.S. Br. 28. Accordingly, petitioner's rule would not have its intended effect of preventing debtors from having to bear any costs associated with litigating dischargeability.

b. Even if an advance determination were required, respondents obtained one here. Petitioner's only response (Br. 22 n.11) is that respondents should have asked the bankruptcy court, not the state court, to resolve the issue. That is incorrect. Although federal courts have exclusive jurisdiction over bankruptcy petitions, 28 U.S.C. 1334(a), state and federal courts have concurrent jurisdiction to determine whether particular debts are dischargeable in bankruptcy, 28 U.S.C. 1334(b). See, *e.g.*, *First State Bank of Roscoe*, 914 F.3d at 1137; *Eden* v. *Robert A. Chapski, Ltd.*, 405 F.3d 582, 586 (7th Cir. 2005); *Whitehouse* v. *LaRoche*, 277 F.3d 568, 576 (1st Cir. 2002); see also U.S. Br. 27. The only exceptions are the instances where the Bankruptcy Code has required advance determinations of dischargeability.

11 U.S.C. 523(a)(2), (4) and (6); *Espinosa*, 559 U.S. at 268-269.[19]

This concurrent jurisdiction serves the interests of judicial economy by allowing state courts to rule on bankruptcy matters that those courts are in a better position to address, either because they raise issues of state law or because they involve matters that have been pending before the state court. See, *e.g.*, *In re Apex Oil Co.*, 406 F.3d 538, 542 (8th Cir. 2005); Fed. R. Civ. P. 8(c)(1) advisory committee's note (2010) (dischargeability may be decided by "the court that entered the discharge" or, more commonly, "another court with jurisdiction over the creditor's claim"). And when state and federal courts have concurrent jurisdiction over a case, the parties cannot be required to pursue their claims in one forum instead of the other. See *Atlantic Coast Line R.R.* v. *Brotherhood of Locomotive Eng'rs*, 398 U.S. 281, 295 (1970).

Here, respondents asked the state court to resolve the dischargeability issue because it arose in the context of the pending state-court case and depended on facts before the state court. Consistent with the established rule of concurrent jurisdiction, petitioner admitted below that the state court could decide that issue. J.A. 94; see Pet. Br. at 14, *Sherwood Park Bus. Ctr.* v. *Taggart*, 341 P.3d 96 (Or. Ct. App. 2012), 2012 WL 7959224. Once the state court resolved that issue

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[19] When Congress vested state courts with concurrent jurisdiction over discharge questions, it also provided that federal courts may defer to state-court determinations "in the interest of comity with State courts," 28 U.S.C. 1334(c)(1), and required federal courts to defer to state courts in certain circumstances, 28 U.S.C. 1334(c)(2). These amendments reflect Congress's desire to give state courts greater authority to hear bankruptcy-related claims and to show "increased respect for state courts and state laws." S. Rep. No. 55, 98th Cong., 1st Sess. 19 (1983).

in respondents' favor, respondents "were entitled to rely on that decision." Pet. App. 47a.

D. This Court Should Affirm Rather Than Remand

Under either respondents' standard or the government's standard, it is clear that contempt sanctions are inappropriate here. Neither the discharge order nor the Bankruptcy Code resolved whether seeking post-discharge attorneys' fees in the ongoing state litigation would violate petitioner's discharge order. The discharge order was a form order that granted petitioner a discharge but did not specify to which particular debts it applied. J.A. 59-62. The Bankruptcy Code states that the discharge order relieves the debtor from "debts" that arise before the order for relief, 11 U.S.C. 727(b), and defines a "debt" as "liability on a claim," 11 U.S.C. 101(12). But it does not resolve whether a claim to post-discharge attorneys' fees is considered a pre- or post-discharge claim. Circuit precedent allowed a claim for attorneys' fees that was based on the debtor's post-discharge "return to the fray" in ongoing litigation. See *In re Ybarra*, 424 F.3d 1018, 1024 (9th Cir. 2005). That precedent gave respondents a reasonable basis to believe that they could seek attorneys' fees consistent with the discharge order. See Pet. App. 50a-51a (respondents "could not possibly have been aware that the discharge injunction was applicable to their fee request until the *Ybarra* question was adjudicated").

Further, respondents did not simply rely on their own reasonable beliefs about dischargeability. Instead, they acted diligently and in good faith to resolve the open issue about the scope of the discharge order. Pet. App. 47a (respondents "should be praised, not sanctioned" for seeking judicial resolution of the open legal issue). Respondents advised the state court of

the discharge order; advised the court of controlling precedent; and asked the state court to decide whether, under that precedent, respondents could seek attorneys' fees consistent with the discharge order. *Id.* at 13a. The state court resolved the issue in their favor, holding that the discharge order did not bar the attorney's fee award. J.A. 96-99. The bankruptcy court agreed. Pet. App. 33a-34a.

This Court should affirm. None of the relevant facts are disputed. And when this Court's precedents are applied to those undisputed facts, the outcome is clear. All agree that respondents acted in good faith. Pet. App. 13a. Respondents were entitled to rely on the state court's determination in their favor. See *Watts*, 190 U.S. at 32 (attorney could rely on state court's order regarding property in bankruptcy proceedings); *McComb*, 336 U.S. at 192 (suggesting that creditor that sought judicial "clarification" would not be held in contempt). The fact that other courts later disagreed does not undermine the reasonableness of respondents' position and the inappropriateness of contempt. See *California Artificial Stone Paving Co.*, 113 U.S. at 618 ("If the judges disagree there can be no judgment of contempt.").

It would be very instructive for this Court to set out the governing rule and then apply that rule to the facts of this case. Whether contempt is appropriate depends on the totality of the circumstances, see *Maggio*, 333 U.S. at 76, and it would provide the courts of appeals helpful guidance if the Court applies the rule it adopts to the facts of this case. Further, a remand would serve no useful purpose. All a remand would do is increase the costs to the parties and on the judicial system and extend this lengthy dispute, possibly for years into the future. Petitioner's bankruptcy proceedings have been ongoing since 2010, and even

though Brown passed away in 2013, his estate has had to remain open for five and one-half years as a result of this dispute. It is time for this case to end.

Finally, the court of appeals' language about "unreasonable" good-faith beliefs should not prevent this Court from finally resolving the case. See, *e.g.*, *Air & Liquid Sys. Corp.*, 2019 WL 1245520, at *6 (affirming the judgment while disapproving of some of the court of appeals' reasoning). This Court may affirm on any ground permitted by the record, and the Court has had "little hesitation in deciding [a] case" when "the factual record is adequate" and applying the correct standard is "straightforward." *Thigpen* v. *Roberts*, 468 U.S. 27, 32-33 (1984). That is the case here. Respondents did everything right. They do not deserve contempt sanctions.

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted.

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APPENDIX

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1. 11 U.S.C. 105 provides:

Power of Court

(a) The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, sua sponte, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process.

(b) Notwithstanding subsection (a) of this section, a court may not appoint a receiver in a case under this title.

(c) The ability of any district judge or other officer or employee of a district court to exercise any of the authority or responsibilities conferred upon the court under this title shall be determined by reference to the provisions relating to such judge, officer, or employee set forth in title 28. This subsection shall not be interpreted to exclude bankruptcy judges and other officers or employees appointed pursuant to chapter 6 of title 28 from its operation.

(d) The court, on its own motion or on the request of a party in interest –

(1) shall hold such status conferences as are necessary to further the expeditious and economical resolution of the case; and

(2) unless inconsistent with another provision of this title or with applicable Federal Rules of Bankruptcy Procedure, may issue an order at any such conference prescribing such limitations and

conditions as the court deems appropriate to ensure that the case is handled expeditiously and economically, including an order that –

(A) sets the date by which the trustee must assume or reject an executory contract or unexpired lease; or

(B) in a case under chapter 11 of this title –

(i) sets a date by which the debtor, or trustee if one has been appointed, shall file a disclosure statement and plan;

(ii) sets a date by which the debtor, or trustee if one has been appointed, shall solicit acceptances of a plan;

(iii) sets the date by which a party in interest other than a debtor may file a plan;

(iv) sets a date by which a proponent of a plan, other than the debtor, shall solicit acceptances of such plan;

(v) fixes the scope and format of the notice to be provided regarding the hearing on approval of the disclosure statement; or

(vi) provides that the hearing on approval of the disclosure statement may be combined with the hearing on confirmation of the plan.

2. 11 U.S.C. 362 provides, in pertinent part:

Automatic stay

(a) Except as provided in subsection (b) of this section, a petition filed under section 301, 302, or 303 of this title, or an application filed under section 5(a)(3)

of the Securities Investor Protection Act of 1970, operates as a stay, applicable to all entities, of –

(1) the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title;

(2) the enforcement, against the debtor or against property of the estate, of a judgment obtained before the commencement of the case under this title;

(3) any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate;

(4) any act to create, perfect, or enforce any lien against property of the estate;

(5) any act to create, perfect, or enforce against property of the debtor any lien to the extent that such lien secures a claim that arose before the commencement of the case under this title;

(6) any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case under this title;

(7) the setoff of any debt owing to the debtor that arose before the commencement of the case under this title against any claim against the debtor; and

(8) the commencement or continuation of a proceeding before the United States Tax Court con-

cerning a tax liability of a debtor that is a corporation for a taxable period the bankruptcy court may determine or concerning the tax liability of a debtor who is an individual for a taxable period ending before the date of the order for relief under this title.

* * *

(k)(1) Except as provided in paragraph (2), an individual injured by any willful violation of a stay provided by this section shall recover actual damages, including costs and attorneys' fees, and, in appropriate circumstances, may recover punitive damages.

(2) If such violation is based on an action taken by an entity in the good faith belief that subsection (h) applies to the debtor, the recovery under paragraph (1) of this subsection against such entity shall be limited to actual damages.

3. 11 U.S.C. 524 provides, in pertinent part:

Effect of discharge

(a) A discharge in a case under this title –

(1) voids any judgment at any time obtained, to the extent that such judgment is a determination of the personal liability of the debtor with respect to any debt discharged under section 727, 944, 1141, 1228, or 1328 of this title, whether or not discharge of such debt is waived;

(2) operates as an injunction against the commencement or continuation of an action, the employment of process, or an act, to collect, recover or offset any such debt as a personal liability of the debtor, whether or not discharge of such debt is waived; and

(3) operates as an injunction against the commencement or continuation of an action, the employment of process, or an act, to collect or recover from, or offset against, property of the debtor of the kind specified in section 541(a)(2) of this title that is acquired after the commencement of the case, on account of any allowable community claim, except a community claim that is excepted from discharge under section 523, 1228(a)(1), or 1328(a)(1), or that would be so excepted, determined in accordance with the provisions of sections 523(c) and 523(d) of this title, in a case concerning the debtor's spouse commenced on the date of the filing of the petition in the case concerning the debtor, whether or not discharge of the debt based on such community claim is waived.

4. 26 U.S.C. 7433 provides:

Civil damages for certain unauthorized collection actions

(a) In general

If, in connection with any collection of Federal tax with respect to a taxpayer, any officer or employee of the Internal Revenue Service recklessly or intentionally, or by reason of negligence, disregards any provision of this title, or any regulation promulgated under this title, such taxpayer may bring a civil action for damages against the United States in a district court of the United States. Except as provided in section 7432, such civil action shall be the exclusive remedy for recovering damages resulting from such actions.

(b) Damages

In any action brought under subsection (a) or petition filed under subsection (e), upon a finding of liability on the part of the defendant, the defendant shall be liable to the plaintiff in an amount equal to the lesser of $1,000,000 ($100,000, in the case of negligence) or the sum of –

(1) actual, direct economic damages sustained by the plaintiff as a proximate result of the reckless or intentional or negligent actions of the officer or employee, and

(2) the costs of the action.

(c) Payment authority

Claims pursuant to this section shall be payable out of funds appropriated under section 1304 of title 31, United States Code.

(d) Limitations

(1) Requirement that administrative remedies be exhausted

A judgment for damages shall not be awarded under subsection (b) unless the court determines that the plaintiff has exhausted the administrative remedies available to such plaintiff within the Internal Revenue Service.

(2) Mitigation of damages

The amount of damages awarded under subsection (b)(1) shall be reduced by the amount of such damages which could have reasonably been mitigated by the plaintiff.

(3) Period for bringing action

Notwithstanding any other provision of law, an action to enforce liability created under this section may be brought without regard to the amount in controversy and may be brought only within 2 years after the date the right of action accrues.

(e) Actions for violations of certain bankruptcy procedures

(1) In general

If, in connection with any collection of Federal tax with respect to a taxpayer, any officer or employee of the Internal Revenue Service willfully violates any provision of section 362 (relating to automatic stay) or 524 (relating to effect of discharge) of title 11, United States Code (or any successor provision), or any regulation promulgated under such provision, such taxpayer may petition the bankruptcy court to recover damages against the United States.

(2) Remedy to be exclusive

(A) In general

Except as provided in subparagraph (B), notwithstanding section 105 of such title 11, such petition shall be the exclusive remedy for recovering damages resulting from such actions.

(B) Certain other actions permitted

Subparagraph (A) shall not apply to an action under section 362(h) of such title 11 for a violation of a stay provided by section 362 of such title; except that –

(i) administrative and litigation costs in connection with such an action may only be awarded under section 7430; and

(ii) administrative costs may be awarded only if incurred on or after the date that the bankruptcy petition is filed.

5. 28 U.S.C. 1334 provides:

Bankruptcy cases and proceedings

(a) Except as provided in subsection (b) of this section, the district courts shall have original and exclusive jurisdiction of all cases under title 11.

(b) Except as provided in subsection (e)(2), and notwithstanding any Act of Congress that confers exclusive jurisdiction on a court or courts other than the district courts, the district courts shall have original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11.

(c)(1) Except with respect to a case under chapter 15 of title 11, nothing in this section prevents a district court in the interest of justice, or in the interest of comity with State courts or respect for State law, from abstaining from hearing a particular proceeding arising under title 11 or arising in or related to a case under title 11.

(2) Upon timely motion of a party in a proceeding based upon a State law claim or State law cause of action, related to a case under title 11 but not arising under title 11 or arising in a case under title 11, with respect to which an action could not have been commenced in a court of the United States absent jurisdiction under this section, the

district court shall abstain from hearing such proceeding if an action is commenced, and can be timely adjudicated, in a State forum of appropriate jurisdiction.

(d) Any decision to abstain or not to abstain made under subsection (c) (other than a decision not to abstain in a proceeding described in subsection (c)(2)) is not reviewable by appeal or otherwise by the court of appeals under section 158(d), 1291, or 1292 of this title or by the Supreme Court of the United States under section 1254 of this title. Subsection (c) and this subsection shall not be construed to limit the applicability of the stay provided for by section 362 of title 11, United States Code, as such section applies to an action affecting the property of the estate in bankruptcy.

(e) The district court in which a case under title 11 is commenced or is pending shall have exclusive jurisdiction –

(1) of all the property, wherever located, of the debtor as of the commencement of such case, and of property of the estate; and

(2) over all claims or causes of action that involve construction of section 327 of title 11, United States Code, or rules relating to disclosure requirements under section 327.